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9  
10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA  
12

13 UNITED STATES OF AMERICA,  
14  
15 Plaintiff,  
16  
17 v.  
18  
19 GERARD GALLANT,  
20  
21 Defendant.

No. 93-cr-0233 GEB GGH  
STIPULATION AND PROPOSED ORDER

22 Gerard Gallant, by and through appointed counsel Sandra  
23 Gillies, and the United States, by and through Ross K. Naughton,  
24 Assistant United States Attorney stipulate as follows:  
25

26 1. On November 22, 1996, Mr. Gallant was convicted of  
27 conspiracy to escape, 18 U.S.C. § 371; escape, 18 U.S.C. §§  
28 2, 751(a)(2), and possession of a firearm following a felony  
conviction. 18 U.S.C. § 922(g). ECF No. 177.

1 The probation officer's report noted Mr. Gallant's  
status as career offender and an armed career criminal,  
based on his convictions for "first-degree Armed

1           Burglary," robbery, and forced oral copulation. PSR ¶  
2           38. The PSR classified Mr. Gallant as an armed career  
3           criminal under 18 U.S.C. § 924(e) because of his  
4           convictions of robbery and rape by force, "first degree  
5           armed burglary," robbery, and oral copulation. Id. ¶ 39  
6

7           3. The probation officer calculated the base offense to be  
8           35 and, as a result of the intersection between the base  
9           offense level and the criminal history score, determined  
10          the guideline range to be 292 to 365 months, given Mr.  
11          Gallant's status as a career offender and an armed career  
12          criminal. PSR ¶¶ 31, 59.  
13

14          4. On February 14, 1997, the Honorable Garland E. Burrell  
15          adopted the presentence report and sentenced Gallant to a  
16          term of 365 months on count five, with terms of 60 months  
17          concurrent on counts one and two. ECF. No. 189.  
18

19          5. On June 26, 2015, the Supreme Court issued its opinion  
20          in *Johnson v. United States*, — U.S. —, 132 S.Ct. 2551,  
21          which struck down the ACCA's residual clause as  
22          unconstitutionally vague. Id. at 2557.  
23

24          6. On June 6, 2016, Mr. Gallant filed an application to  
25          pursue a second or successive motion to vacate his  
26          sentence, 28 U.S.C. § 2255, raising a *Johnson* challenge  
27          to his sentence.  
28

1           7. On January 25, 2017, the Court of Appeals authorized Mr.  
2           Gallant to proceed with his challenge.

3  
4           8. On March 16, 2017, the United States agreed with Mr.  
5           Gallant that his California convictions for burglary and  
6           robbery can no longer serve as ACCA predicates. ECF No.  
7           268.

8  
9           9. Because Mr. Gallant is no longer an armed career  
10          criminal under 18 U.S.C. § 924(e), he is no longer  
11          subject to the mandatory minimum sentence of fifteen  
12          years.

13  
14          10. Because Mr. Gallant's prior convictions for burglary  
15          and robbery are not crimes of violence, he is no longer a  
16          career offender under U.S.S.G. 4B1.1 and so his criminal  
17          history category is IV rather than VI.

18  
19          11. With an adjusted base offense level of 35 and a  
20          criminal history category of IV, his Guidelines range is  
21          235-293 months.

22  
23          12. Mr. Gallant was taken into federal custody on May 16,  
24          1993, PSR at 1, so if he is sentenced to 293 months, he  
25          has completed his term.

1           13. Mr. Gallant has assured counsel he does not wish to  
2           return to court for any further proceedings regarding his  
3           sentence.  
4

5           14. Accordingly, the parties stipulate to the issuance of  
6           an order granting Mr. Gallant's motion to correct his  
7           sentence and to the imposition of a new sentence of 293  
8           months.  
9

10          Dated: June 12, 2017.

11                 /s/ Sandra Gillies

12                 Attorney for Gerard Gallant

13          Dated: June 12, 2017.

14                 /s/ Ross K. Naughton

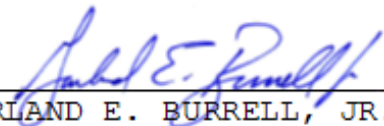
15                 Assistant United States Attorney  
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ORDER

The court, having read and considered the stipulation of the parties, hereby ORDERS:

1. The motion to vacate or correct the sentence, deemed filed June 6, 2016, ECF No. 263, is GRANTED;
2. The 365 month sentence imposed February 14, 1997, is VACATED;
3. The court finds Mr. Gallant's criminal history score to be 9, with a corresponding criminal history category IV, and his total offense level to be 35, with a corresponding guideline range of 235-293 months;
4. The court commits Mr. Gallant to the Bureau of Prisons to be imprisoned for a term of 293 months;
5. All other terms and conditions of the sentence imposed on February 14, 1997, remain in effect.

Dated: June 13, 2017

  
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GARLAND E. BURRELL, JR.  
Senior United States District Judge